

untrustworthy:

Vincent Gioacchini: You think it's all right with these two [Guglielmetti and an associate] comin' to the house?

Frederick Simone: Dee -- you see this [gun]? I'll put one [bullet] right in their fuckin' head. That's it. It's as simple as that.

Vincent Gioacchini: Go down the fuckin' down the store or something.

Frederick Simone: No you can't--no this is safe. Nobody lives here. I'll clean up and that's the end of it. I'll fuckin' bang [shoot] him right here. That's on my dead father and mother. That's it. I don't give a fuck. That's it. That's it. I'll fuckin' bang him right here. That's the truth! That's the fuckin'! I don't give a fuck. I doubt I'm at that point. I did fifteen, eighteen [years in prison] in my life I'll do another fifteen, I don't give a fuck. You think I care? I don't give a fuck.

(*Id.* at 40 (emphasis added).) They continued:

Vincent Gioacchini: That's why it would of been better if we went down the fuckin' street.

Frederick Simone: No, that's worse. That's worse, that's worse. Over here just leave, blam, don't worry about it. I know what to do.

Francis White: That's why I wonder, that's why I wonder.

Frederick Simone: Just use them bags. We'll come back at night. Don't worry, he'll be packaged right up. I'll get the sheets and everything. That's it. Fuck that. I'd rather do a little cleanin'. Over here, over here, when I shut the lights out it's pitch black. You can't see nothin'. Nothing. Nothing. Nothing. I could leave him in the fuckin' yard for a week.

(*Id.* at 67 (emphasis added).) Simone and Gioacchini thus proved

their readiness for killing and its messy aftermath.

The twosome elsewhere reiterated their commitment to violence and loyalty to each other. For example, when Gioacchini expressed his concerns about whether his violent actions could have ramifications for his family, he pledged:

Vincent Gioacchini: I'm gonna tell you my come right from my fuckin' heart. If I ever out with my fuckin' wife or my kid and I ever catch anybody looking at me the wrong fuckin' way, I'm going right to his fuckin' house, no questions asked. Then I'm gonna go right to his and I'm going right [down] the line. Sonny [Boy Rizzo, LCN Underboss] all of them. Sonny all of them that's it.

Frederick Simone: Make sure you call me.

(Id. at 39 (emphasis added).) Sensing his co-defendant's anxiety, Simone reassured Gioacchini:

Ya. Don't, don't let that fuckin' asshole get you all excited. Because you know he's nothin'. That fuckin' creep. It's a fuckin' shame believe me when I tell you, it's a shame. It's a fuckin' shame, Dee [Gioacchini]. Don't make them, make you go to the can because, you gotta do it right. You know? And there's no reason for you not to do it right. You got five of us. And we'll do it right, believe me when I tell you, we'll do it right, Dee. I hope you're not stupid. . . .

(Id. at 58-59 (emphasis added).)

Simone and Gioacchini had another similar conversation when Gioacchini described his intention to exact revenge on the person he believed responsible for the problems:

Vincent Gioacchini: I went by there (unintelligible). I went by there. Last, see I was hopin' to catch him.

Frederick Simone: Ha.

Vincent Gioacchini: I went through the back alley
(unintelligible) come through the back
(unintelligible).

Frederick Simone: You gotta, you're supposed to get us, you
fuckin' nut.

Vincent Gioacchini: I came back (unintelligible). I went and I
grabbed (unintelligible). I went through the
bathroom (unintelligible). He had the back
door open. I was hopin' to catch him. And
that's what I'm gonna do. I'm gonna do it.
I got something fuckin' planned I want to
rock-n-roll with it, Freddy.

Frederick Simone: Ya. You come and get us. You got four guys.

Vincent Gioacchini: Ha. No one's gonna, no one's gonna hear
nothin', I'm goin' the same way I come in,
they same way I'm gonna go out. . . .

(Id. at 43-44 (emphasis added).)

Simone summarized the situation: "We're we're fighting for
survival here. Right? We don't know who's who. The only one we
know is Spucky [Anthony Spagnolo]. Really then we kill who
else?" (Id. at 66.) Simone then communicated the ramifications
for his adversaries: "I say, 'You better not fuck me,' I said,
'because I'm gonna come back, if I hear that kind of talk, ah,
come out somebody else's mouth, put me in the middle of that
shit,' I said, 'you're gonna end up in trouble.'" (Id. at 47.)

Tellingly, Simone described his attitude about the entire
situation:

I said, "and somebody's gonna get hurt. If I got to
hurt a sucker on the street, I'm goin' right in that
mother fucker's house, I'm tellin' you now because.

Before I get pinched, I'm gonna handle whatever I can, then fuck it. I might as well get pinched for two, one is just as bad as two, or three. What the fuck, what am I gonna do. I'm fifty years old, if I got to do another fifteen, I'll get out at sixty-five, what the fuck, I'm dead anyway, might as well, kill me now.
Fuck. That's it. Don't you see?

(Id. at 55 (emphasis added).) In other words, Simone has nothing to lose by criminal violence because a sentence like the one he faces in this case is, from his perspective, a life sentence as a practical matter. Nevertheless, he willingly takes the risk that his violent plans will get him in trouble: "I don't give a fuck. I ain't gonna get shot. I'd rather get judged by twelve [jurors] than carried by six [pallbearers]. I don't give a fuck Dee Dee [Gioacchini]." (Id. at 62 (emphasis added).)

Gioacchini effectually agreed: "Now I'll quit fuckin' work and I'll devote my time to the fuckin' street and I'll annihilate everybody." (Id. at 39 (emphasis added).) Judging them by their own words, therefore, Simone and Gioacchini have made a guaranteed commitment to future violence.

2. Simone and Gioacchini are dangerous and violent because of their LCN membership and connections.

The individually expressed and proven violence of each of Simone and Gioacchini is exacerbated by each man's status as a long-time LCN Soldier.⁸ Simone has proudly exclaimed the thirty-

⁸Contrary to the circumstances confronting the Court in Patriarca and DiGiacomo, both Simone and Gioacchini have proven

year history which he and Gioacchini share with the LCN. (*Id.* at 7.) Gioacchini was present at the October 29, 1989 LCN induction ceremony in Medford, Massachusetts where law enforcement authorities intercepted and recorded the blood loyalty oaths of "omerta" which LCN members take to prove their supreme allegiance to protecting the LCN Family. (*Id.* at 5.) This fact alone suffices for the Court to "infer that he, like the inductees, took an oath at some point in his career, and that oath included swearing his lifelong paramount loyalty to the Mafia" and to "assume that the Defendant either explicitly or implicitly agreed to kill informants on behalf of the LCN if he were ever instructed to do so." Patriarca, 776 F. Supp. at 603. See also DiGiacomo, 746 F. Supp. at 1184. As LCN Soldiers, Simone has likewise pledged omerta, (Tutungian Aff. at 5), permitting the Court to draw the same inference.

Neither Simone nor Gioacchini has denied or controverted the government's allegations regarding their LCN membership. The First Circuit's admonitions thus apply pointedly to this case:

[A]ssociation with a criminal cabal [like the LCN] . . . membership in a[n LCN] Family, and . . . avowals to further the Family's goals, through illicit activity, are highly relevant considerations under 18 U.S.C.

or made explicit in their own words their capacities for violence. Compare Patriarca, 776 F. Supp. at 603 (noting that the defendant "has no penchant or personal aptitude for violence") and DiGiacomo, 746 F. Supp. at 1183, 1185 (noting that the undercover agent "never saw DiGiacomo become violent or possess a weapon" and that "he has no criminal record").

§3142(g). Appell[ants are] being judged, as [t]he[y] should be, as . . . individual[s], with one relevant characteristic being [their] devotion to the Mafia and [their] pledge[s] to violate the law whenever necessary to further its ends.

Tortora, 922 F.2d at 885 n.6 (emphasis added). Simone and Gioacchini have made good on their violent pledges in the past and have pledged to do so again.

3. Simone and Gioacchini are flight risks.

LCN membership increases the flight risk for each of Simone and Gioacchini. See Patriarca, 776 F. Supp. at 604 ("[T]he Mafia has resources to facilitate flight" since "[i]t is a far-flung organization with money."); DiGiacomo, 746 F. Supp. at 1189 ("As a Soldier in the Mafia, he may have the capacity to obtain criminal assistance from 'associates' who are not 'made members' of the organization."). Simone's 1987 conviction for his role in the Patrizzi homicide shows his history of participating in LCN-engineered criminal undertakings. He proved more recently his extensive LCN influence when he was able to arrange for the Rhode Island Capo Matthew Guglielmetti to intercede on behalf of Simone and his co-defendants to resolve their LCN wrangling. (Id. at 16). Likewise, Simone enlisted the aid of recently assassinated LCN acting Capo Aldolfo Bruno, from the New York-based Genovese crime Family living in Springfield, Massachusetts, who had tried to broker the peace on behalf of Simone and his co-defendants.

Bruno traveled to Rhode Island and then met with all three co-defendants in Boston's North End while Simone, Gioacchini and White also tried to arrange for Guglielmetti's personal involvement. (Id. at 74-75.) This longstanding LCN involvement makes available to each of Simone and Gioacchini an extensive international network which might assist their every need. (E.g., id. at 23-25 (demonstrating the LCN's ability to facilitate coded communication with imprisoned Members).)

Simone and Gioacchini are capable of evading law enforcement. Both know FBI agents by name, enhancing their ability to evade detection. (Id. at 17-18.) Simone has communicated with imprisoned LCN members. (Id. at 23-24.) Gioacchini is sophisticated about the criminal process, displaying his knowledge of potential penalties for certain crimes. (Id. at 20-23.) Finally, Gioacchini has admitted that he formerly had a fake driver's license, one with his photograph but somebody else's identification information, presumably to facilitate subterfuge. (Id. at 16.) These admissions demonstrate that Simone and Gioacchini are sophisticated about the criminal legal process and how to avoid it.

4. Simone disrespects the Court.

Simone's demonstrated insolence for this Session of this Court unequivocally displays his inability to abide by any Order

of this Court, including any Court-imposed conditions of release. Simone has previously demonstrated the strength of his loyalty to his co-defendant in this case, Gioacchini, when he arrogantly defied this Court's admonitions to identify Gioacchini to this Court. In United States v. Anthony Cardinale, Crim. No. 97-10267, this Court (Wolf, D.J.) had granted Simone immunity. In the following exchange, Simone refused to identify Gioacchini by the nickname "Glasses," a person who Simone elsewhere described by saying, "the guy with the glasses is crazy [violent]". (Tutungian Aff. at 26.) Simone testified in front of this Court as follows:

AUSA Brian Kelly: Who's Glasses?

Frederick Simone: I'm not going to answer that.

Mr. Cardinale: Objection, your Honor.

. . .

Judge Wolf: The objection is overruled, and you are ordered to answer the question.

Frederick Simone: Your Honor, I'm not going to answer them questions. I want to answer all the questions I can to help the Court with the Cardinale case, but I'm not going to answer any names and bring any other people in on the thing. If you want my help with the Court, you know, I'm trying to do the right thing for the Cardinale case, but this other stuff here, I know their sons, daughters, and what not, and I don't want to bring them in.

(Id. at 26-27 (emphasis added).) In other words, Simone placed

his loyalty to his current co-defendants above his legal obligations to obey this Court.

After this Court warned Simone of the possibility of civil or criminal contempt, Simone responded: "I understand that, your Honor. But you need pe[a]ce of mind sometimes." (Id. at 27.) Elsewhere, Simone claimed that he was "Glasses". (Id. at 27.) Elsewhere, Simone acknowledged "Glasses" was not him, but he would not say who it was.

AUSA Brian Kelly: But on occasion when Mr. Jackie Salemme told you somebody nicknamed Glasses had seen the informant documents, that person was referred to Glasses, and it wasn't you?

Frederick Simone: Once, right.

AUSA Brian Kelly: And that's what you're refusing to tell us, that person's name?

Frederick Simone: Exactly.

(Id. at 27.) Simone repeatedly rebuffed this Court's admonitions:

Frederick Simone: Exactly. He [Salemme] wanted that clear in my mind so I could make it clear in other people's minds.

Judge Wolf: What other people?

Frederick Simone: Whoever.

Judge Wolf: What other people?

Frederick Simone: I refuse to answer that, your Honor.

Judge Wolf: Do you understand that that's a subject of possible civil contempt,

and that's a subject of possible criminal contempt?

Frederick Simone: I understand.

(Id. at 28 (emphasis added).)

Simone elsewhere set forth his bottom line. This Court asked, "Do you understand the immunity order compels you to answer any question?", Simone replied: "I understand that. I have to have pe[a]ce of mind." (Id. at 28.) He continued:

I was always taught: If you don't like the seat you're sitting in, don't put nobody else in it. And I'm not gonna do that. So, it's not only Glasses. No matter who you mentioned, if they're not involved in this thing, I'm not putting them involved. That goes against my principles.

(Id. at 28.) After Simone's consistently petulant responses, this Court concluded: "[I]t's professional disturbing that [Simone] would choose not to answer questions." (Id. at 28.) Not only did Simone "choose not to answer questions," the foregoing excerpts show that he flatly refused the Court's direct order to do so. Moreover, Simone did so because of his allegiance to the LCN generally and to fellow LCN Soldier and co-defendant Gioacchini in particular.

Because Simone has refused to obey this Court's orders face-to-face, he cannot be trusted to obey them on release.

III. CONCLUSION

For the foregoing reasons, this Court should adopt and affirm Magistrate Judge Alexander's January 16, 2004 Order on Detention and deny in full Simone's and Gioacchini's Claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Colin Owyang, do hereby certify that I served a copy of the foregoing pleading by first-class mail on February 4, 2004 on counsel for defendant Frederick Simone, Kevin J. Reddington, Esq., 1342 Belmont Street, Suite 203, Brockton, MA 02301 and for defendant Vincent Gioacchini, Robert A. George, Esq., 138 Newbury Street, Suite 3, Boston, MA 02116.


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